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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

B5



DATE: MAR 30 2012

OFFICE: NEBRASKA SERVICE CENTER

FILE: [REDACTED]

IN RE: Petitioner: [REDACTED]  
Beneficiary: [REDACTED]

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Nebraska Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. At the time he filed the petition, the petitioner was an environmental engineer at [REDACTED] Corporation, Fort Myers, Florida. [REDACTED] subsequently purchased that company, but has stated its intention to continue to employ the petitioner in the same capacity. The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner has not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, the petitioner submits a 12-page brief.

Section 203(b) of the Act states, in pertinent part:

(2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. –

(A) In General. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of Job Offer –

(i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The director did not dispute that the petitioner qualifies as a member of the professions holding an advanced degree. The sole issue in contention is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor the pertinent regulations define the term “national interest.” Additionally, Congress did not provide a specific definition of “in the national interest.” The Committee on the Judiciary merely noted in its report to the Senate that the committee had “focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . .” S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

The Service [now U.S. Citizenship and Immigration Services (USCIS)] believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the “prospective national benefit” [required of aliens seeking to qualify as “exceptional.”] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

*Matter of New York State Dept. of Transportation (NYSDOT)*, 22 I&N Dec. 215 (Act. Assoc. Comm’r 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, the petitioner must show that the alien seeks employment in an area of substantial intrinsic merit. Next, the petitioner must show that the proposed benefit will be national in scope. Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications.

While the national interest waiver hinges on prospective national benefit, it clearly must be established that the alien’s past record justifies projections of future benefit to the national interest. The petitioner’s subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term “prospective” is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

The AAO also notes that the regulation at 8 C.F.R. § 204.5(k)(2) defines “exceptional ability” as “a degree of expertise significantly above that ordinarily encountered” in a given area of endeavor. By statute, aliens of exceptional ability are generally subject to the job offer/labor certification requirement; they are not exempt by virtue of their exceptional ability. Therefore, whether a given alien seeks classification as an alien of exceptional ability, or as a member of the professions holding an advanced degree, that alien cannot qualify for a waiver just by demonstrating a degree of expertise significantly above that ordinarily encountered in his or her field of expertise.

The petitioner filed the Form I-140 petition on February 15, 2007. In an introductory statement, the petitioner stated:

With my excellent academic background [and] outstanding professional experience, I have made significant contributions that are highly praised by my colleagues and independent distinguished experts. As stated on their recommendation letters, I have been recognized as an outstanding licensed professional engineer in Environmental Engineering, and one of very few experts in hydraulic/process modeling and surge analysis and design.

As an [REDACTED], my current job priority is to protect our sensitive environment from pollution, which, without any doubt, requires substantial intrinsic merit and benefits the national interest. Therefore, the national interest would be adversely affected if a labor certification were required.

The AAO notes that, ten weeks after the petitioner wrote the above statement, [REDACTED] applied for a labor certification on his behalf. Following the approval of that labor certification, the employer filed a Form I-140 petition on August 3, 2007, seeking to classify the petitioner as a professional under section 203(b)(3)(A)(ii) of the Act. The Director, Texas Service Center (TSC), approved that petition on July 31, 2008, with a priority date of April 20, 2007. Thus, the question of whether labor certification would disrupt the petitioner's employment is no longer hypothetical. Circumstances have proven his then-employer's ability to obtain labor certification on his behalf.

The petitioner documented various awards and honorable mentions he had received, mostly from his employer. These materials attest to the petitioner's skill as an engineer, but they are not strong evidence of eligibility for the waiver. Under the USCIS regulation at 8 C.F.R. § 204.5(k)(3)(ii)(F), evidence of recognition for achievements and significant contributions to the industry or field by peers, governmental entities, or professional or business organizations provides only partial support for a claim of exceptional ability in the arts, the sciences or business. Other types of evidence are necessary to fully establish exceptional ability. Because, as explained above, exceptional ability does not automatically qualify an alien for the national interest waiver, partial evidence of exceptional ability does not imply eligibility for the waiver.

Eight witness letters accompanied the initial filing. [REDACTED]

[REDACTED] where the petitioner earned his master's degree in that subject, described the petitioner's student work and stated that the petitioner "also worked as [REDACTED]"

[REDACTED] The witness concluded by stating that the petitioner "has developed his proved expertise in environmental engineering, especially in mathematical modeling and process development of wastewater treatment. Therefore, I am confident he can be a very successful environmental engineer and researcher."

Three of the witnesses are on the faculty of the University of Tennessee (UT), Knoxville, where the petitioner earned a master's degree in statistics and a doctorate in environmental engineering. [REDACTED], an [REDACTED] stated:

[The petitioner] is employed in a critical area of national need . . . and . . . his skills, training and ability allow him to serve the national interest in this capacity at a level that exceeds that of U.S. workers having the same minimal qualifications.

. . . [The petitioner's] area of employment as an expert in water and wastewater transport and treatment infrastructure meets a critical national need.

[The petitioner's] skills, training, and ability position him to not only participate in the rehabilitation and expansion of the nation's water and wastewater infrastructure, but to provide a high level of expertise in this area and to be a leader in it. . . .

[The petitioner] has applied these skills to several of his projects including the hydraulic and process modeling/simulation of several treatment plants, pump stations and waste collection systems. His level of expertise in the ability to model and simulate these processes sets him apart [sic] from other engineers working in the water and wastewater treatment field.

UT Professor [REDACTED] was more measured in his praise of the petitioner, stating:

I was a co-principal investigator on the research project that funded much of [the petitioner's] doctoral program. [The petitioner] also served as my graduate teaching assistant for several semesters in my undergraduate Civil Engineering course on designing water distribution and wastewater collection systems.

I believe that [the petitioner] is a competent engineer in water and wastewater systems. . . .

I am also pleased that [the petitioner] has contributed to the scientific literature in wastewater treatment plant design. Relatively few engineers have contributed to the profession in this way.

[REDACTED] associate professor at UT, stated:

I have had [the petitioner] in several classes, been on his Ph.D. committee, and written several articles or research papers with him. He has some unique skill sets that are hard to find in this country. . . .

As an environmental engineer, he has been very productive; and I expect that to continue. His tool sets in knowledge, in engineering software, in programming languages, and in statistical software is very difficult to find in any one individual.

Two of the three witnesses from UT emphasized the scarcity of the petitioner's skill set, rather than his particular accomplishments. Given the asserted shortage of qualified engineers with the requisite training, and the evident existence of an offer of permanent employment, the situation appears to correspond closely to the very situation that the labor certification process was designed to address. *NYSDOT*, 22 I&N Dec. 222. The issue of whether similarly-trained workers are available in the U.S. is an issue under the jurisdiction of the Department of Labor. *Id.* at 221.

[REDACTED] regional director of engineering, vice president and principal engineer at [REDACTED], stated:

I have been working with [the petitioner] closely on a lot of big projects. . . . His outstanding professional work has won high praises from both our clients and his colleagues. As known, surge analysis and design are still relatively new in engineering practices although it has been discussed for a long time. Only very few top engineering firms are able to do the surge analysis and design. With his excellent academic background and outstanding mathematical modeling experience, [the petitioner] easily becomes one of the top experts in this area. As a result, he is currently serving as the technical director of hydraulic modeling, and surge analysis and design at Boyle Engineering Corporation. . . .

[The petitioner] is a gifted professional engineer who plays an irreplaceable role in novel, but significant fields (especially in surge analysis and design) that only very few top engineers and scientists are able to take.

branch manager and principal who has “been working with [the petitioner] on a wide variety of engineering designs and studies,” stated that the petitioner’s “professional work and excellent engineering judgments proved his competences as a licensed professional engineer.”

The remaining two initial letters are from independent witnesses, namely

and

engineering specialist with the Tennessee Valley Authority, Knoxville, Tennessee. The letters are differently worded but make the same general points, attesting to a shortage of engineers in the petitioner’s specialty and praising the petitioner’s high level of training.

The petitioner documented several conference presentations and journal articles, and documented a citation of his work in a Chinese-language journal.

The petitioner also claimed authorship of two “Published Books.” He was one of seven authors of

On May 8, 2008, the director issued a request for evidence. The director noted that several witnesses “testified to the shortage of engineers,” and the director asked “what precludes from obtaining a labor certification on [the petitioner’s] behalf?”. (By this time, as noted above, had in fact obtained a labor certification, and a soon-to-be-approved petition was already pending.)

The director instructed the petitioner to document the sales of his two books, and the total number of citations that his papers had earned, and copies of examples of citing articles.

In response, the petitioner asserted that the labor certification process could result in the hiring of a less-qualified engineer. (Subsequent events showed that this did not happen.) The petitioner asserted that he “published more than 20 professional publications . . . that generated a total of more than **15 citations**” (emphasis in original). Using printouts from the Google Scholar search engine (<http://scholar.google.com>), the petitioner showed that one paper from 2001 earned at least ten citations; a second from 1999, at least four citations; and a third from 2002, at least one citation. The petitioner submitted copies of four of the citing articles. The Google Scholar printouts, as well as the four sample articles, are all in Chinese. The petitioner did not establish any citations of his English-language publications from after he entered the United States in 2003.

The director, in requesting copies of citing articles, stated that the purpose of the request was to “demonstrate the significance that the citing authors placed on [the petitioner’s] contributions.” The petitioner, however, did not provide certified translations of the Chinese-language articles submitted. Therefore, the AAO cannot consider the content of the articles. *See* 8 C.F.R. § 103.2(b)(3).

With respect to book sales, the petitioner stated his report for WERF had sold 183 copies, and his dissertation had sold “at least 4” copies. The petitioner noted that the second title “is available to be downloaded . . . or accessed online,” and therefore an unknown number of researchers may have used the book without purchasing it. Speculation about untracked downloads is not evidence. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm’r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg’l Comm’r 1972)).

To support his claims about book sales, the petitioner submitted copies of electronic mail messages. A representative of IWA Publishing stated: “We have sold 19 hard copies of [the petitioner’s] WERF Report since 2004.” A contact at WERF indicated “85 Publications were ordered,” “24 PDF [files] downloaded” and “55 Executive Summaries were downloaded.” The petitioner calculated the “183 copies” figure by adding all the above numbers together, thus counting “executive summary” downloads as book sales. The petitioner did not justify this strategy. If a researcher downloaded the executive summary and then returned to purchase the book, by the petitioner’s logic this would count as selling two copies.

██████████ a library official at UT, writing to the petitioner, stated the following about his dissertation:

We do not track how many times a particular document is downloaded or accessed online. I have no idea whether we have a hardcopy of your document anywhere in the library, much less whether it has been accessed. . . . We keep one copy of your PDF on a CD in Special Collections; we keep one copy online where it can be accessed; we keep one copy on another server for preservation purposes.

On the printout of the above message, the petitioner highlighted the phrase “one copy” each time it appeared. The above message, therefore, appears to be the source for the petitioner’s claim about sales of “at least 4” copies, even though ██████████ only mentioned three copies and did not state

that the library had bought them. The petitioner did not submit any evidence to show that it was unusual, rather than a matter of routine, for UT to retain copies of graduate works produced at that university. Also, the petitioner submitted nothing from ProQuest/UMI, previously identified as the dissertation's publisher.

The minimal evidence submitted did not indicate that the petitioner's published work had been especially influential in his field.

The petitioner submitted what he described as "four witness letters from **independent and/or world-famous experts**" (emphasis in original). [REDACTED] of the University of Nebraska-Lincoln focused on the petitioner's then-recent work, praising a presentation that the petitioner made at a May 2008 conference in Hawaii and the "ASCE Report Card on Florida's Infrastructure," published in March 2008.

The above achievements took place well after the petition's February 2007 filing date. An applicant or petitioner must establish that he or she is eligible for the requested benefit at the time of filing the application or petition. 8 C.F.R. § 103.2(b)(1). USCIS cannot properly approve the petition at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971).

The next letter bears the signature of [REDACTED], vice president of the engineering firm of [REDACTED]. The letter indicated that one of the petitioner's papers "has been cited more than 10 times. These high citations of his published work are certainly persuasive evidences of his significant impacts on his peers' research work." The AAO notes that Google Scholar only lists ten citations for the petitioner's work if the search is entered in Chinese. Therefore, either [REDACTED] conducted the search himself in Chinese, or someone furnished the results to him, or he signed a letter that someone else wrote. With respect to the third possibility, the AAO notes multiple grammatical anomalies in [REDACTED] letter, in phrases such as "he by himself successfully completes the surge analysis" and "[h]is outstanding work is published and presented on one of top international conferences." Like [REDACTED] letter, [REDACTED] letter refers to events after the petition's filing, such as a conference in Toronto, Canada.

[REDACTED] stated:

one of [the petitioner's] research projects, *Tools for Rating the Capacity of Activated Sludge Plants*, greatly helps America design more cost-effective wastewater treatment systems. . . . According to the IWA and WERF's publication record, this research report has been sold worldwide for more than 180 copies since it was first published in 2003. With no doubts, such a great achievement proves that the benefits of his service are tremendous to protect and preserve our nation's environment.

[REDACTED], thus, referred to the petitioner's own questionable "183 copies" sales figure. The record contains no documentary (non-testimonial) evidence to show that the petitioner's co-authored publication has sold an unusually high volume of copies and influenced the petitioner's field.



Like other witnesses, [REDACTED] environmental projects manager at the Tennessee Valley Authority, referred to recent projects, describing them and deeming them to be “outstanding” with little explanation as to how the petitioner’s work has affected and continues to influence civil engineering in the United States.

The director denied the petition on September 10, 2008, stating: “the record indicates that as of the filing date of this petition the petitioner had been doing research in the United States for nearly six years but that no one in this country had yet cited any of his work. This is not an indicator . . . of widespread influence on his field.” With respect to the petitioner’s two published reports, the director stated: “the sales figures of the [petitioner’s] first report are not negligible, [but] neither are they indicative of . . . a significant impact on [the] field.” The director found that the petitioner’s initial witness letters “do not greatly distinguish him from other licensed professional engineers in environmental engineering who hold Ph.D.’s in that field,” and that the letters submitted in response to the request for evidence relied on the petitioner’s “achievements since the filing date of this petition.” Finally, the director noted the approval of [REDACTED]’s petition (with an approved labor certification).

On appeal, the petitioner asserts that he documented many “outstanding achievements and contributions as of [the petition’s] filing date,” and proceeds to list them. The list includes the petitioner’s academic degrees and professional licenses, which are not so much “outstanding achievements” as required credentials for the petitioner to lawfully work as an engineer.

The petitioner asserts that the director did not give sufficient weight and consideration to the witness letters. The Board of Immigration Appeals (BIA) has held that testimony should not be disregarded simply because it is “self-serving.” *See, e.g., Matter of S-A-*, 22 I&N Dec. 1328, 1332 (BIA 2000) (citing cases). The BIA also held, however: “We not only encourage, but require the introduction of corroborative testimonial and documentary evidence, where available.” *Id.* If testimonial evidence lacks specificity, detail, or credibility, there is a greater need for the petitioner to submit corroborative evidence. *Matter of Y-B-*, 21 I&N Dec. 1136 (BIA 1998).

The opinions of experts in the field are not without weight and have received consideration above. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm’r. 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien’s eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; USCIS may, as above, evaluate the content of those letters as to whether they support the alien’s eligibility. *See id.* at 795; *see also Matter of V-K-*, 24 I&N Dec. 500, 502 n.2 (BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to “fact”). USCIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795; *see also Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm’r. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg’l. Comm’r. 1972)).

The letters considered above, like the petitioner's own statements, identify various achievements and then declare them to be highly significant, without showing how the petitioner's work has continued to influence the field. It has not escaped the AAO's notice that a number of these letters repeat questionable information first put forward by the petitioner, such as the book sale figures. Such claims do not take on greater significance or weight simply because witnesses repeat them.

The petitioner correctly asserts: "While citations of published work would be persuasive evidence, it is not universally mandatory in every national interest waiver case." Nevertheless, the petitioner introduced his citation history into the proceeding with his initial submission in 2007. It is not a minor matter that all of the petitioner's documented citations are by Chinese scientists, citing work that the petitioner published in China before 2003. The petitioner has argued, and has had witnesses argue on his behalf, that his recent published and presented work is of great interest to engineers and researchers in the United States, which does not readily reconcile with the apparent cessation of citation that coincided with his arrival in the United States.

The petitioner asserts that there are no translations of his Chinese-language articles, and therefore only Chinese speakers read and cite those articles. It remains, however, that the petitioner has since produced English-language articles that present no such difficulty. The petitioner claims that citation databases do not track citations of books and reports in the same way that they track citations of journal articles, but the petitioner submits no evidence to support this claim. It remains that the absence of citations is not automatically grounds for denial, but the petitioner must produce some other credible evidence in their place.

The director, in the denial notice, noted that the petitioner's claimed book sales figures included 55 "executive summaries." On appeal, the petitioner repeats the claim that "[t]he total number sales of [the] two books is 187" (emphasis in original) and protests the director's characterization of "at least 4 sales" as "fewer than five copies." The petitioner quotes [REDACTED] previous letter, with its reference to "more than 180 copies," but the record does not show that [REDACTED] obtained that figure from anyone other than the petitioner himself (who demonstrably counted partial downloads as sold copies).

The petitioner repeats the claim that several of the witnesses are "world-famous," but does not substantiate that claim. He asserts that the witnesses "provided an objective evaluation" of his achievements, but as the above example shows, much of the information in the witness letters appears to have come from the petitioner himself rather than from any identified, independent source.

The petitioner contends, on appeal, that he had "specifically explained . . . why labor certification requirements would adversely affect the national interest." The petitioner acknowledges that, by the time of the appeal, he was the beneficiary of an approved immigrant petition with labor certification. He asserts, nevertheless, that "they are two separate cases, and should be treated individually." The petitioner is correct that the two petitions are separate and distinct proceedings, but this does not oblige USCIS or the AAO to ignore the approved labor certification and petition insofar as it relates to the proceeding at hand. If it is the petitioner's contention that "labor certification . . . would

adversely affect the national interest” because it might lead to his replacement, then it is highly relevant to the matter at hand that he has, in fact, gone through the labor certification process without being replaced. The petitioner, in effect, presents a vague hypothetical scenario, while insisting that USCIS must ignore known facts that contradict it.

The AAO notes that, after the filing of the present appeal, the TSC director has approved two other employment-based immigrant petitions, both seeking to classify the petitioner as an alien of extraordinary ability in the sciences under section 203(b)(1)(A) of the Act. [REDACTED] filed one such petition on July 8, 2010. The petitioner filed the other petition on his own behalf on September 16, 2010. The TSC director approved both petitions on the same date, September 19, 2011. Under the USCIS regulation at 8 C.F.R. § 204.5(e), the petitioner is entitled to a priority date of April 20, 2007, which is the priority date of the earliest approved petition. According to the Department of State’s most recent Visa Bulletin (March 2012), visa numbers are current for first-preference employment-based immigrant petitions for all nationalities.<sup>1</sup> Therefore, even if the AAO were to reverse the director’s decision and approve the present petition, thus granting the petitioner a priority date in February 2007 instead of April 2007, that two-month shift would have no practical effect on the petitioner’s ability to adjust status, either in terms of timing or likelihood of approval of the adjustment application.

The petitioner has shown that he has been an active and productive engineer, working on important projects while also occasionally producing work for publication in scholarly journals. The available evidence, however, does not show that, in February 2007, the petitioner stood out from other engineers in his specialty to an extent that warranted the special benefit of a national interest waiver. The subsequent approval of three immigrant petitions on the petitioner’s behalf did not cause the dismissal of this appeal, but they do demonstrate that the present petition is effectively redundant.

As is clear from a plain reading of the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

**ORDER:** The appeal is dismissed.

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<sup>1</sup> Source: [http://www.travel.state.gov/visa/bulletin/bulletin\\_5664.html](http://www.travel.state.gov/visa/bulletin/bulletin_5664.html) (printout added to record March 14, 2012).